

POLI/INDI 3351 WDE
Indigenous Peoples and the Law
“Legal Pluralism”
Summer 2022
July 4th – 22nd
Professor: Toby Rollo
E-mail: trollo@lakeheadu.ca
Office Hours: On request

1. Course Description

This condensed course will be a online experience examining how the socio-legal tradition of legal pluralism can help us understand the relationship between the distinct but overlapping legal orders of Indigenous peoples and Canada. The field of legal pluralism examines the coexistence of multiple normative orders that govern our conduct. State law is but one set of rules that interacts with and competes with other non-state sets of rules. State law can have its own pluralism as well, with customary, religious, common and civil laws all applying within a single jurisdiction. In a world that is having to take seriously the diversity of political and legal claims, including those of Indigenous peoples, interest in legal pluralism has intensified.

This course begins by introducing students to the main concepts and debates within legal pluralism. Students will read early studies on the sociology of law as well as important contemporary articles on non-state normative orders belonging to different cultural and religious groups, economic communities, and even sports. The second part of the course analyses case studies of overlapping Indigenous jurisprudences and jurisdictions, with a focus on the complimentary and conflictual relationship between various Indigenous and Canadian claims.

2. Required Texts

All readings and other materials will be linked or posted on the D2L Courselink site for this course.

3. Grading, Expectations, and Assignments

Your grade for the course will be based on the following required components:

Engagement	(Monday ZOOM Session)	3 meetings x 5%	15%
Participation	(D2L Discussion Section)	15 days x 2%	30%
Quizzes	(D2L Quiz Section)	2 quizzes x 15%	30%
Final Test	(D2L Quiz Section)	1 test x 25%	25%
Total			100%

1. “Engagement” (3 x 5% = 15%)

- a. Each Monday at 10 am, for those of you who can attend, we will spend an hour discussing the theme of the week. I will provide a short talk and answer questions. For those of you who cannot attend, the session along with accompanying slides will be recorded and posted so you can view it at your convenience. You can then email me any questions you might have.

- b. Engagement with each of the meetings is worth 5%, whether it is in person or with the posted talk. There are three Monday meetings and therefore a total of 15% available.
- c. Topic: Monday Morning Legal Pluralism Discussion
Time: July 4, 2022 10:00 AM Eastern Time (US and Canada)
Every week on Mon, 3 occurrence(s)
July 4, 2022 10:00 AM
July 11, 2022 10:00 AM
July 18, 2022 10:00 AM

Join Zoom Meeting

<https://lakeheadu.zoom.us/j/97903300036?pwd=WU1yWnhGTUhXQTQwVTJIYUpYL1R3QT09>

Meeting ID: 979 0330 0036

Passcode: 985613

2. Daily Participation (15 days x 2% = 30%)

- a. The course is separated into three weeks, with each week consisting of five days, for a total of fifteen days.
- b. For each of the fifteen days in the course, students will be expected to participate in D2L discussions about the readings for that day. Students shall post a comment providing their impressions of the readings and are free to reply to other comments. On the Friday, as there are no readings, students should give summary thoughts on the weeks readings as a whole.
 - i. Provide at least a paragraph of your thoughts on one or more of the readings for that day. Consider: What did you like? What didn't you like? What surprised you? Did it make you think of anything? Did it seem relevant to anything from your own life or the life of someone you know? What lingering questions do you have?
- c. Posting your comment is worth 1%. Replying to the comments of others is worth up to an additional 1%. Thus, each day of participation is worth up to 2%, for a total of up to 30% contribution to your overall grade over the fifteen days.
- d. The daily discussion forums for each week will close at the end of that week on the Sunday, so students have until the forum closes at the end of the week to participate. Thus, if you miss a day or two, you have until the end of the week to go back and contribute. It is important to participate in the discussions, if not on a daily basis, then at least before the week closes.

3. Quizzes (2 x 15% = 30%)

- a. At the end of the first two weeks, on the Friday, there will be a quiz featuring multiple choice question about the readings for that week. Each quiz is worth 15% for a total of 30% of your overall grade.

- b. The quiz will be open for the entire day – the full 24 hours – on the Friday of each week of the course. However, once you start the quiz, you will have **one hour** to complete it. The quizzes are scheduled for...
 - i. **Friday, July 8**
 - ii. **Friday July 15**

4. Final Test (1 x 25% = 25%)

- a. At the end of the final week, on the Friday, there will be a final test featuring multiple choice and short answer question about the readings for that week. The test is worth 25% of your overall grade.
- b. The test will be open for the entire day – the full 24 hours – on the Friday of the final. Once you begin, you will have 90 minutes to complete the test. The final test is scheduled for...
 - i. **Friday, July 22**

4. E-mail

E-mail will be answered within two business days.

I welcome e-mail queries and comments. All students are required to have a valid Lakehead e-mail address. It is your responsibility to maintain your e-mail address in good working order. The University expects you to correspond with me through your official e-mail address, and not through a commercial e-mail account.

Failure to receive important class announcements and messages from me because of a faulty e-mail account (for example, an account which screens out my e-mails as junk mail; bounced messages because of overloaded caches) are not legitimate excuses.

Forwarding your Lakehead email to a Hotmail, Gmail, Yahoo or other type of e-mail account is not advisable. In some cases, messages from your Lakehead addresses sent to Hotmail, Gmail or Yahoo accounts are filtered as junk mail, which means that e-mails from me may end up in your spam or junk mail folder.

5. Accessibility

Students with diverse learning styles and needs are welcome in this course. If you have a disability/health consideration that may require accommodations, please feel free to approach Accessibility Services. The sooner you let us know your needs the quicker we can assist you in achieving your learning goals in this course.

7. Academic Integrity

The University takes instructional offences (including plagiarism) very seriously. Please make sure that you are familiar with the regulations regarding instructional offences. Also, it is not acceptable to submit the same assignment in two different courses.

8. Course Schedule

SECTION ONE: INTRO TO LEGAL PLURALISM

Day 1 (Monday, July 4) Early Studies in Legal Pluralism

- 10 am ZOOM Meeting
- Tamanaha, “Legal Pluralism in Historical Context”
- Tamanaha, “Understanding Legal Pluralism: Past to Present, Local to Global”

Day 2 (Tuesday, July 5) The Field of Study

- Merry, “Stateless Law: Before, Inside, and Outside the Law of the State”
- Anker, “Law in Time and Space”

Day 3 (Wednesday, July 6) Concepts and Criticism

- Cotterrell, “Still Afraid of Legal Pluralism?”
- Jukier, “The Impact of ‘Stateless Law’ on Legal Pedagogy”

Day 4 (Thursday, July 7) States and other Sites of Law Making

- Tamanaha, “Legal Pluralism in the West”
- Tamanaha, “Postcolonial Legal Pluralism”

Day 5 (Friday, July 8) QUIZ

- QUIZ #1

SECTION TWO: CASE STUDIES

Day 6 (Monday, July 11) Cultural Contexts I

- 10 am ZOOM Meeting
- Simon, “The Best Interests of the Child in a Multicultural Context: A Case Study”
- Weyrauch, “Autonomous Law Making: The Case of the ‘Gypsies’”

Day 7 (Tuesday, July 12) Cultural Contexts II

- Shapiro, “Law in the Kibbutz: A Reappraisal”
- Cavender “A Note on Voodoo as an Alternative Mechanism for Addressing Legal Problems”

Day 8 (Wednesday, July 13) Cultural Contexts III

- Ellickson, “The Resolution of Cattle Trespass Disputes”
- CBC, “The Code: Documentary on Fighting in Hockey”
<https://www.youtube.com/watch?v=qwe6LgsPn-A>

Day 9 (Thursday, July 14) Cultural Contexts IV: Indigenous Peoples

- Webber, “Legal Pluralism and Human Agency”
- Borrows “Living law on a Living Earth: Aboriginal Religion, Law, and the Constitution

Day 10 (Friday, July 15) QUIZ

- QUIZ #2

SECTION THREE: INDIGENOUS LAW IN CANADA

Day 11 (Monday, July 16) Indigenous and Human Rights I

- 10 am ZOOM Meeting
- Otis, “Individual Choice of Law for Indigenous People in Canada: Reconciling legal Pluralism with Human Rights?”

Day 12 (Tuesday, July 19) Indigenous and Human Rights II

- McMillan, “Colonial Traditions, Co-optations, and *Mi'kmaq* Legal Consciousness”

Day 13 (Wednesday, July 20) Treaty Rights I

- Otis “Constitutional Recognition of Aboriginal and Treaty Rights: A New Framework for Handling Legal Pluralism in Canada?”
- Gover, “Indigenous Jurisdiction as a Provocation of Settler State Political Theory”

Day 14 (Thursday, July 21) Treaty Rights II

- Manley-Casimir, “Toward a Bijural Interpretation of the Principle of Respect in Aboriginal Law”
- Borrows, “Nitam-Miigwewein Zaagi’idiwin (Gift One: Love) Love: Law and Land in Canada’s Indigenous Constitution”

Day 15 (Friday, July 22) FINAL TEST

- *FINAL TEST*